

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

<b>MARINA CAPITAL, LLC as successor in interest to FIDELITY DEPOSIT &amp; DISCOUNT BANK,</b>	)	
	)	Civil Action No. 16-mc-246 (JLL)
	)	
<b>Plaintiff,</b>	)	Honorable Jose L. Linares, U.S.D.J.
	)	
<b>v.</b>	)	Honorable Joseph A. Dickson,
	)	U.S.M.J.
	)	
<b>LEENA SHAH, ANKIM M. SHAH, BHARAT PARJKH, BHUPENDRA PATEL a/k/a BHUPEN PATEL, RITA SHAH, DIVYAKANT PATEL, HARSHAD PATEL, KETUL DESAI, BHARAT SHAH, and RIKESH DESAI,</b>	)	
	)	
<b>Defendants.</b>		

**STATUS REPORT**

Marina Capital, LLC ("Marina"), successor in interest to Fidelity Deposit & Discount Bank ("Fidelity"), as plaintiff in the above captioned matter, by and through its undersigned attorneys, respectfully submits this status report with respect to the action pending in the Court of Common Pleas of Lackawanna County, Pennsylvania, as directed by the Court on March 25, 2019 [Dkt. No. 108]:

1. Clarks Summit Hospitality, LLC ("CSH") was the owner of a hotel property located at 1101 Northern Blvd., South Abington Township PA ("Property"). CSH was the borrower under certain loans extended by Fidelity Deposit & Discount Bank ("Fidelity"). The loans went into default and Fidelity entered judgments against CSH in the amounts of \$913,116.87 (#2016-CV-4460) and \$4,154,329.98 (#2016-CV-4461) (collectively, "Judgments"). Fidelity also entered judgments against the personal guarantors in the United States District Court in Pennsylvania. Fidelity purchased the Property at the Lackawanna County Sheriff's Sale held on July 11, 2017.
2. Subsequently, the Judgments and all rights thereunder were assigned to Plaintiff, Marina.

As of the date of the assignment, September 25, 2017, the Defendants/Respondents owed Fidelity, now Marina, not less than \$5,841,862.42. These amounts continue to accrue interest and costs as allowed pursuant to the underlying loan documents and applicable law.

3. On January 16, 2018, Marina timely filed its Amended Petition to Fix the Fair Market Value of the Property in the State Court proceedings pursuant to Section 8103(a) of the Judicial Code, 42 Pa.C.S. Section 8103 (a) ("Pennsylvania Deficiency Judgment Act"). The Respondents in these actions are the personal guarantors of the obligations owed to Fidelity which have been assigned to Marina. The Respondents are improperly attempting to re-litigate or challenge the Judgments.
4. Marina has alleged that the fair market value of the property at the relevant time was \$3,700,000.00 thereby resulting in a substantial deficiency owed to Petitioner. However, subsequent to the filing of the Petition, Marina has discovered that the property's fair market value is actually approximately \$2,300,000.00. Therefore, the deficiency judgment would be in excess of \$3,500,000.00.
5. The respondents (Harshad Patel and Divyakant Patel, collectively, "Respondents") filed Answers to Marina's Petition to Fix the Fair Market Value of the Property. However, in addition to answering the Petition, the Respondents also alleged certain improper affirmative defenses. It is Marina's position that the Pennsylvania Deficiency Judgment Act is solely to determine the value of the property sold to the foreclosing creditor at the Sheriff's Sale. 42 Pa. C.S. §8103(a) ("... the judgment creditor shall petition the court to fix the fair market value of the real property sold.")
6. Pursuant to the limited scope of the supplementary action, Marina filed a Petition to Strike/Dismiss Respondents' Improper Defenses on March 16, 2018. The matter was been fully briefed and was argued before the Honorable Thomas Munley on March 14, 2019.
7. On March 20, 2019, Judge Munley **granted** Marina's Petition to Strike Defendants' affirmative defenses, without prejudice to the Respondents'/Defendants' right to seek to adjudication of their defenses in the federal cases.
8. Respondents have attempted to expand the allowed scope of discovery in the state court action. Even though the sole issue is the fair value of the Property as of the Sheriff Sale in July 2017, Respondents have requested documents and information beyond that scope, and is opposed by Marina. This issue has now been fully briefed and argued before the state court discovery master and the parties are waiting for a decision.

9. On May 20, 2019, Respondents filed a Motion for Relief from the Judgements entered in 2016 in the United States District Court for the Middle District of Pennsylvania, Civil Action Nos. 16-cv-01616 (JMM) and 16-cv-01617 (JMM). Marina will be opposing the motion.

Dated: May 28, 2019  
New York, New York

**ICE MILLER, LLP**  
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